

## **Toll Credit Policy**

### **Kentucky Transportation Cabinet**

#### **PROGRAM HISTORY**

Toll credits and their use are best explained in "A Guide to Federal-Aid Programs and Projects," Publication Number FHWA-IF-99-006, published by the Federal Highway Administration (FHWA) in May 1999. The following information was extracted from that document and subsequent memorandums of explanation and clarification:

*Originating in Section 1044 of the Intermodal Surface Transportation Efficiency Act of 1991 (1991 ISTEA, Public Law 102-240), 23 U.S.C. 120(j) permits a state to use certain toll revenue expenditures as a credit toward the non-federal matching share of programs authorized by Title 23 (except for Emergency Relief projects effective June 9, 1998) and certain transit projects. This is in essence a "soft match" provision that allows the federal share to be increased up to 100 percent to the extent that credits are available.*

*The amount of credit earned is based on revenues generated by the toll authority (i.e., toll receipts concession sales, right-of-way leases, and interest), including borrowed funds (i.e., bonds, loans) supported by this revenue stream, that are used by that authority to build, improve, or maintain public highways, bridges, or tunnels that serve interstate commerce. The toll facility generating the revenue must be open to public travel. The toll authority may be a public, quasi-public, or private entity. The amount of credit is based on expenditures (outlays) by a toll authority for capital improvements to build, improve, or maintain public highway facilities that carry vehicles involved in interstate commerce. It cannot include expenditures for routine maintenance, (e.g., snow removal, mowing), debt service, or costs of collecting tolls. All such expenditures must have been made entirely from non-Federal sources. The amount of toll credit earned for a given Federal fiscal year is based on the prior year's expenditures. A state can only earn toll credit if it satisfies maintenance of effort determination as clarified in the Memorandum.*

The Transportation Equity Act for the 21st Century (TEA-21, Public Law 105-178) codified provisions for using toll credits toward the nonfederal share of Title 23 (except for Emergency Relief), transit, and NHTSA projects. The law also provided another option for the maintenance-of-effort determination.

The Kentucky Transportation Cabinet (KYTC) applied successfully for toll credits approximately four years ago. The purpose at that time was to use them for the state-match portion on federal projects ultimately scheduled to be funded utilizing GARVEE Bonds. This use essentially made those projects 100 percent federal, thereby not affecting the Commonwealth's overall debt capacity. The 2000 General Assembly enacted HB502, which allowed the KYTC to develop and implement a program to accelerate projects in the Biennial Highway Construction Plan. The 2002-2004 Biennial Budget (HB269) modified the plan, requiring the KYTC to maintain a minimum Road Fund cash management target of \$100 million. Cash management and the inherent fiscal limitations dictated that the KYTC use toll

credits for all new federally funded highway projects. In addition to the use of toll credits to fund the match for federally funded highway projects, the KYTC has granted local agencies the use of toll credits on a limited basis to fund their matching requirement for public transit projects.

### **NEED FOR POLICY**

The KYTC currently has available approximately \$1.8 billion in toll credits. Previously, the Cabinet accumulated credits faster than it used them. However, for federal fiscal year 2006, the Cabinet anticipates that it will not meet the Maintenance of Effort (MOE) criteria and thus will not be eligible for toll credit approval. It appears that the MOE criteria will be met once more when the bond funds debt is added.

Virtually all of the federal-aid highway and transit programs require a state or local matching share for the individual projects within these programs. As state and local funds are utilized across the wide array of transportation programs, the ability to apply toll credits becomes an important option for managers to ensure that the use of all transportation dollars is maximized. For instance, as the KYTC has sought to manage cash flow more closely, the opportunity to use toll credits to pursue some federal-aid projects using 100 percent federal dollars has proven invaluable. Similarly, this option has allowed and will continue to allow many local transit agencies to use 100 percent federal funds for capital purchases while maximizing the use of local funds for fleet maintenance and operations, resulting in better-quality service to their customers. As the KYTC has pursued the use of toll credits, however, it has become apparent that a toll credit policy is needed in order to provide an orderly mechanism for:

- Determining project eligibility
- Defining a formal application process
- Generating appropriate approvals
- Tracking the ultimate use of toll credits

The following sections of this policy expand on these activities.

### **PROJECT ELIGIBILITY**

According to FHWA's "A Guide to Federal-Aid Programs and Projects," a state may use certain toll-revenue expenditures as a credit toward the nonfederal matching share of programs authorized by Title 23 (except Emergency Relief projects authorized on or after June 9, 1998) and by Chapter 53 of Title 49 (transit). For the KYTC and other participating entities across Kentucky, this means that any project or program authorized under a federal-aid highway funding category or federal transit assistance category that requires a matching fund contribution may be deemed eligible to use toll credits to satisfy the matching fund requirement.

### **TOLL CREDIT ADMINISTRATION**

The Executive Director, Office of Budget and Fiscal Management, or designee, shall have the responsibility to track the toll credit program and conduct the analysis required to determine the amount of toll credits for which the KYTC qualifies to be reimbursed. He or she shall also prepare the written business case, including appropriate justification, addressed to the FHWA for the Transportation Cabinet Secretary's (Secretary) signature. The Executive Director shall make every effort to conduct an annual analysis and request reimbursement.

The Division of Accounts shall prepare and maintain electronic records in an easily readable format to guarantee that toll credit usage is constantly monitored and coordinated with FHWA or Federal Transit Administration (FTA). These records shall include a list of all toll credit transactions and the current balance. Thus, toll credit utilization shall be recorded and made easily identifiable in the central accounting system, thereby making possible the tracking of toll credit transactions in a fashion similar to all other federal-aid highway and transit-fund obligations. The management of this account shall receive the same attention and be afforded the same importance as every other transportation account.

### **BIENNIAL BUDGET**

Statewide policy regarding the annual appropriation of state matching funds and the usage of toll credits to substitute for the nonfederal share of federal funds shall be established through the biennial budget process. The enacted budget shall establish annual appropriation limits of state matching funds. It is envisioned that the enacted budget shall also provide the Cabinet the flexibility to use either toll credits or state road funds to match federal highway dollars. HB267, Section L (10), authorizes the Cabinet to utilize toll credits when necessary.

### **ANNUAL BUDGET**

In conjunction with the provisions of the enacted budget, policy decisions regarding the use of toll credits to substitute for state and local matching funds shall be made during the establishment of each fiscal year's budget. On the basis of recommendations from other Cabinet managers, the Secretary shall authorize annual toll credit usage budget levels for both the federal-aid highway and transit programs. The budget levels shall represent the limits of toll credit usage delegated to the Department of Highways (DOH) and the Office of Transportation Delivery (OTD) for both state and local matches. The DOH and OTD are delegated the authority to approve the usage of toll credits within the annual toll credit budget levels authorized by the Secretary. Requests for additional toll credit budget authority must be submitted through the Executive Director, Office of Budget and Fiscal Management, to be authorized by the Secretary.

### **TOLL CREDITS USE BY NON-KYTC APPLICANTS**

The owner of a non-KYTC project or program shall submit a written request to the Secretary that toll credits be applied to that project or program. This request shall:

- Confirm the Title 23 or Title 49 basic eligibility of the project or program, as well as the usual matching share requirement
- Explain how toll credits shall be used in lieu of the usual matching funds
- Clearly state the dollar amounts of the project or program, as well as the dollar amounts associated with toll credit usage

Applicants shall also submit a signed and authorized Toll Credit Application Certification form verifying that local funds freed up as a result of using toll credits shall be used for transportation purposes. A copy of this form is located at the end of this policy.

It is a goal of the KYTC to use toll credits to encourage investment in transportation in Kentucky, while ensuring that applying toll credits does not reduce such investment by creating a mechanism through which transportation spending in Kentucky actually declines. The KYTC has the option to waive this requirement on a case-by-case basis if it is deemed to be in the best interests of the Cabinet.

### **TOLL CREDITS APPROVAL PROCESS**

The KYTC shall carefully evaluate all toll credit applications with regard to the eligibility criteria. Evaluation includes the following:

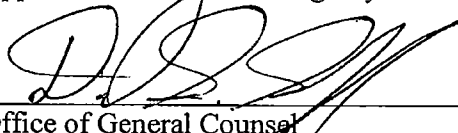
1. The responsible KYTC office shall thoroughly consider the effect of applying toll credits.
2. The office may then authorize toll credit usage up to the budget level authorized by the Secretary.
  - The Division of Program Management shall prepare programming documents for approved projects under the FHWA.
  - The Office of Transportation Delivery shall prepare similar documents for transit projects.
3. The division/office shall submit the documents to the appropriate federal office with ultimate jurisdiction over the acceptability of a project or program for toll credit programming. Appropriate KYTC signatures are required on the programming documents.

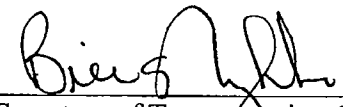
The KYTC and the federal agencies shall be solely responsible for resolving any issues regarding programming projects with toll credits. The final determination will then be communicated to the affected project or program owner, along with an assessment of remaining viable options for matching that project or program. As stated earlier, the DOH and the OTD are delegated the authority to approve the usage of toll credits within their programmatic areas of responsibility. This authority is extended to these entities for both state and local matching requirements. Close coordination with the Office of the Secretary regarding the approval of local toll credit applications is recommended to ensure full communication regarding how toll credits are being utilized.

### CONCLUSION

In this time of fiscal constraint, the use of toll credits as a financing tool is a tremendous resource for the KYTC and transportation interests throughout Kentucky. It is the KYTC's goal to manage toll credits responsibly and to invest them wisely in an effort to provide a safe, secure, and reliable transportation system that ensures the efficient mobility of people and goods, thereby enhancing both the quality of life and the economic vitality of the Commonwealth.

Approved as to form and legality:

  
Office of General Counsel      7-8-05  
Date

  
Secretary of Transportation Cabinet      7/26/05  
Date

# TOLL CREDIT APPLICATION CERTIFICATION

of the \_\_\_\_\_  
(APPLYING AGENCY)

shall not be diminished by the use of toll credits as the local match. Local support not needed to

Signature of Authorized Official

Title of Authorized Official

Date \_\_\_\_\_

